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**FISCAL IMPACT STATEMENT**

**LS 7274**

**BILL NUMBER:** SB 417

**NOTE PREPARED:** Jan 6, 2004

**BILL AMENDED:**

**SUBJECT:** Deceptive Mortgage Practices.

**FIRST AUTHOR:** Sen. Clark

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- (A) The bill prohibits deceptive acts committed in respect to mortgage transactions.
- (B) The bill establishes the Deceptive Mortgage Practices Unit under the Attorney General.
- (C) The bill provides penalties and enforcement procedures for deceptive mortgage acts.
- (D) The bill appropriates \$150,000 to the Legislative Council to contract for a study of mortgage foreclosure in Indiana.

**Effective Date:** Upon passage; July 1, 2004.

**Explanation of State Expenditures:** *Summary:* (B) - The bill establishes the Deceptive Mortgage Practices Unit (DMPU) under the Attorney General (AG). The Indiana Professional Licensing Agency, Department of Financial Institutions, Department of Insurance, Securities Division of the Secretary of State, the Supreme Court Disciplinary Commission, and the Indiana Housing Finance Authority would be required to cooperate with the DMPU in order to implement the enforcement responsibilities of the bill.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; (5) new

appropriations; and (6) the fee established by this bill. For the FY 2004-2005 biennium the AG has been authorized 302 full-time, 32 intermittent, and 3 temporary positions. As of December 3, 2003, the AG had 249 full-time, 2 part-time, 1 temporary, and 20 intermittent employees. The AG reverted \$645,443 from its operating account at the end of FY 2003. If revenue from the proposed fees do not fully fund the DMPU, the source of funds and resources required to satisfy the requirements of this bill would depend upon legislative and administrative actions.

Under the bill, the DMPU would be funded with revenue from the proposed mortgage record fee. Of the proposed \$3 fee, \$2.50 would be deposited into the Deceptive Mortgage Practices Unit Account of the state General Fund (see *Explanation of State Revenues*). At the end of a state fiscal year, money in the Account in excess of \$150,000 would revert to the state General Fund.

*(D) Mortgage Foreclosure Study* - The bill requires the state to enter into a contract with an independent organization to conduct a study on the causes of the high rate of foreclosure in Indiana during 2001-2004. The study would be funded by an appropriation made from the Deceptive Mortgage Practices Unit Account in FY 2006. The bill appropriates the first \$150,000 generated from the increased mortgage recording fees in FY 2006 only. (See *Explanation of State Revenues*). The study results must be reported in electronic format to the Legislative Council no later than December 31, 2005.

*Background:* There were 29,731 mortgage foreclosure cases filed in Indiana trial courts in 2002.

**Explanation of State Revenues:** *Summary: (B)* The bill establishes a fee of \$3 to be collected by the county recorder for recording a mortgage. County recorders would retain \$0.50 for deposit into the Records Perpetuation Fund, and the remaining \$2.50 would be distributed to the Auditor of State to be forwarded to the DMPU Account to carry out their responsibilities under the bill.

Note: Under the bill, the first \$150,000 in fee revenue deposited into the Deceptive Mortgage Practices Unit Account would be used for the mortgage foreclosure study before any expenditure may be made by the Attorney General on operations of the DMPU.

According to the Department of Local Government Finance, approximately 200,000 parcels of land are sold or conveyed each year. The U.S. Bureau of Census reports that 21.8 M primary mortgages were originated in the U.S. from 1995-1999. Approximately 2.2% of these, or about 96,000 per year, are estimated to be in Indiana. According to the above state estimate, a little less than 50% of all parcels of land sold or conveyed per year would have a mortgage. Therefore, the \$3 fee is estimated to generate about \$48,000 for the recorder and approximately \$240,000 for the DMPU. (This estimate represents a minimum as it does not take into account second and third mortgages.)

*(C) Civil Penalty-* The AG would be allowed to bring an action to enjoin a person from committing deceptive lending acts under the bill. The court could, as one option, assess violators a civil penalty of no more than \$2,000 per violation. If the court decided to issue an injunction instead of a monetary penalty, and that injunction were violated, the violator would be required to pay a civil penalty not exceeding \$15,000.

In addition, those that knowingly and intentionally were to violate the provisions of the bill would commit an act that is actionable by the AG and would be subject to the penalties for deceptive acts. Current law includes civil penalties up to \$500 per deceptive act and up to \$15,000 per violation of an injunction.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** (B) County recorder revenues would increase by \$0.50 per mortgage filing (see *Explanation of State Revenues*).

**State Agencies Affected:** Office of the Attorney General; Indiana Housing Finance Authority; Professional Licensing Agency and appropriate licensing boards; Department of Financial Institutions; Department of Insurance; Office of the Secretary of State, Securities Division; Indiana Supreme Court.

**Local Agencies Affected:** County recorders; trial courts.

**Information Sources:** Department of Financial Institutions website: [www.in.gov/dfi/members/minutes](http://www.in.gov/dfi/members/minutes); State Budget Agency website: [www.in.gov/sba](http://www.in.gov/sba); State Budget Agency: BUDSTARS system; State of Indiana *HRM Detail Staffing Report, December 3, 2003*; *Indiana Judicial Service Report 2002, Vol. 1, pg 71*; US Bureau of Census: *American Housing Survey For the United States In 1999*.

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